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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Civil Revision No.: - 64 **/ 2006.** **S.B.**

APPLICANT: -
DEFENDANT No.1

Kapil Narayan, Age-64 Yrs,

S/O Radheshyam,
By Caste Bramhin-Cultivator,
R/O Village Koundkera,
P.S. Tahsil Mahasamund,
Distt MAHASAMUND (C.G.)

R.R. No. 1333/06
Presented by Shri J.P. Lahare
dated 06.05.06

: V E R S U S :

RESPONDENTS :-
Plaintiff

1. **Punit Das,** Age-45 Yrs.

S/O Sunder Das Panika,
By Caste Panika,
By Occupation Kotwar,
R/O Village Koundkera, P.S.
Tahsil/Distt Mahasamund, C.G.

RESPONDENT
Defendant No.2

2. **STATE OF CHHATTISGARH.**

Through The Collector,
Mahasamund,
Distt. Mahasamund C.G.

-: MEMO OF CIVIL REVISION UNDER SECTION 115 OF CIVIL PROCEDURE CODE: -

COPY

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION NO.64/2006

Kapil Narayan

Vs.

Punit Das and another

Appearance :

Shri J.A. Lohani, counsel for the applicant.

ORAL ORDER

(21.6.2006)

SUNIL KUMAR SINHA, J.

Heard on admission.

(2) This revision is directed against the order dated 10.4.2006 passed by the 1st Civil Judge, Class-II, Mahasamund in civil suit No. 122-A/2006, by which, an application filed by the defendant No.1, applicant herein, under Order 7, Rule 11 of the Code of Civil Procedure for rejection of the plaint has been dismissed.

(3) A perusal of copy of the plaint would show that the plaintiff filed a suit for declaration and possession against the defendant, respondent No.1 herein with the allegations that respondent No.1 has wrongfully dispossessed the plaintiff at a particular point of time and the possession of the land should be given to him. The further pleadings are that the plaintiff was appointed as a Kotwar of the village and this land was given to him as a service land and the possession cannot be retained by the said defendant. In the said suit, defendant No.1 filed an application under Order 7, Rule 11 C.P.C.

for rejection of the plaint, raising the grounds that the plaintiff has not taken permission from the State Government before filing the suit and has also not made correct description of the suit property and further the plaint is lacking on many factual aspects.

(4) The learned trial Judge rejected the application, holding that the suit is not barred under any law.

(5) Learned counsel for the applicant argues that in view of the provisions of Section 57 sub-section (2) of the C.G. (M.P.)Land Revenue Code, 1959, the suit would not be maintainable. He refers to the decision rendered in the matter of ***State of M.P. and another vs. Gyasiram and others*** reported in ***1993, Rajaswa Nirnay M.P.High Court, 113.***

(6) The rejection of the plaint is possible in the circumstances which are referred to under Order 7, Rule 11 C.P.C. Order 7, Rule 11 reads as under :

Rejection of plaint: The plaint shall be rejected in the following cases:-

(a) x x x x

(b) x x x x

(c) x x x x

(d) *where the suit appears from the statement in the plaint to be barred by any law*

(e) x x x x

(f) x x x x

(Provided x x x x plaintiff)

(7) Section 57 sub-section (2) of the M.P. (C.G.) Land Revenue Code provides that where a dispute arises between the State Government and any person in respect of any right under sub-section (1), such dispute shall be decided by the Sub-Divisional Officer.

(8) In the present matter, no dispute has been raised against the State Government by the plaintiff and a perusal of the plaint would show that in fact it is *inter se* dispute between the plaintiff and defendant No.1 with regard to possession of the service land, said to have been allotted to the plaintiff at a particular point of time and in the said manner, Section 57, sub-section (2) would not be attracted and further the provisions of clause (d) of Rule 11, Order 7 C.P.C. would also not be attracted in this case.

(9) In the opinion of this Court, the learned trial Judge rightly overruled the objection filed by the applicant under Order 7, Rule 11 C.P.C. There is no merit in the revision and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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